IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

RSA No. **115 of 1997**

Date of Decision : August 22, 2007

Hakam Singh ..... Appellant- plaintiff.

V.

Fattu and others ..... Respondents- defendants

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] No

For the appellant-plaintiff: Mr. H. K. Bhardwaj, Advocate.

For the respondents-defendants: Mr. Naresh Thakur, Advocate.

Sanjay Karol, J. (Oral)

This Regular Second Appeal arises out of the judgment and decree dated 5.6.1997 passed by the District Judge, Una in Civil Appeal No. 88 of 1992 titled as Hakam Singh v. Fattu & others, affirming the judgment and decree dated 29.6.1992 passed by the Sub Judge Ist Class, Court No.II, Amb, District Una, H.P.

The present appeal was admitted on the following substantial questions of law:-

"1. Whether the impugned judgments and decrees are legally sustainable?

2. What is the effect of mis-interpreting and misconstruing the oral as well as documentary evidence?

---

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

3. Whether the non-production of the demarcation report, if any, can be used against the plaintiff to non-suit him?

4. Whether the Courts below are justified in dismissing the suit of the plaintiff more particularly when the plea of adverse possession of the defendants has been negatived?

5. Whether the impugned judgments are the result of mis-construction and mis-appreciation of oral as well as documentary evidence?"

Appellant-plaintiff herein filed a suit for permanent injunction and in the alternative for possession of the suit land. The suit was resisted on the ground that the plaintiff is not the owner and the defendants are in possession of 0-05 marlas of land comprising khasra No 214 in Village Satothar, Tehsil Amb, Distt. Una, H.P., since time immemorial.

Based on the pleadings of the parties, the trial Court framed the following issues:-

1. Whether the plaintiff is estopped by his act and conduct from filing the present suit? OPD

2. Whether the suit is within time? OPP

3. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD

4. Whether the defendants are owners in possession by way of adverse possession of land measuring 0-05 marlas, as alleged? OPD

5. Whether the plaintiff is entitled to the relief claimed for? OPP

6. Relief.

Issues No. 1, 2 & 3 were decided against the defendants. With regard to issues No. 4 & 5, the trial Court found that the plaintiff had not approached the Court with clean hands and, therefore, was not entitled to the relief of declaration or injunction. The Court, however, negatived

the plea the defendants with regard to its having acquired title by way of adverse possession of land ad-measuring 0-05 marlas. The finding of the trial Court, for the purposes of adjudication in the present appeal is necessarily required to be reproduced as under:-

> "The relief of permanent injunction is a discretionary relief and plaintiff must satisfy that the property in dispute remained in his possession through out. It is admitted by PW-1 Hakam Singh that he instituted a suit after obtaining demarcation. PW-2 Ram Asra claimed possession of the plaintiff and his son over the suit land and according to him plaintiff told him that there is boundary dispute relating to the suit land whereas defendant claimed his interest in the land in dispute. The plaintiff has not brought on record demarcation he obtained prior to the filing of the suit. It is settled law that a party must lead best available evidence and evidence in the shape of report was the best evidence. The evidence could have thrown light on the controversy now raised by the plaintiff. In an injunction suit where there is boundary dispute between the parties, it is for the plaintiff to establish that he remained in possession of the disputed portion where controversy arose and that portion formed part of his property. In the case of boundary dispute between the parties, possession over the disputed land is an important element to be taken into consideration in determining the dispute. The real dispute interse the parties is a boundary dispute and plaintiff nowhere disclosed in the plaint that he had obtained demarcation report and if so what was the result of such demarcation. The plaintiff has not come to the Court with clean hands. The plaintiff has withheld the material document from the court which could have disclosed the real dispute interse the parties. Since, the plaintiff could not disclose interference over the disputed property, he is not entitled to the relief of injunction. As such,

issue No.4 is decided against the defendants, whereas issue No.5 against the plaintiff."

Aggrieved by the same, the plaintiff filed an appeal before the District Judge, who held that the defendants did not encroach upon the land measuring 0-05 marlas belonging to the plaintiff. The first Appellate Court found that after purchasing the land, plaintiff got the land demarcated twice which raised suspicion in his mind that some portion of the suit land was in possession of the defendants and, therefore, the suit for injunction was filed to get the possession of the land measuring 5 marlas in possession of the defendants. The Could held that the appellant had suppressed the material facts and was therefore, not entitled for relief of injunction. The Court found that the plaintiff failed to show that the defendants were interfering with the possession of the plaintiff over the suit land excluding 5 marlas, which is beneath the residential house of one of the defendants, namely, Mallhi. The appeal was consequently dismissed.

I have gone through the record and found that the evidence has been correctly appreciated and it cannot be said that the material on record has been mis-interpreted and mis-construed. Plaintiff had to stand on his own legs to prove his case which he has failed to do.

There is no error in any of the judgments rendered by the Courts below nor has any documentary or oral evidence has been mis-interpreted and mis-construed. The Courts below have already held that the demarcation report, on the basis of which the suit was filed, ought to have been produced by the plaintiff and in any case, there is nothing on record to show that there are 5 marlas of land in possession of the

defendants was encroached upon by dispossessing the plaintiff. Non-acceptance of the plea of adverse possession itself would not give any legal right to the appellant entitling him of automatic passing of a decree in his favour. Shri Hakam Singh (PW-1) has admitted that the suit was filed after the demarcation report was obtained by him. The plaintiff is a subsequent purchaser of land and is not aware of the exact position with regard to the ownership of the land in possession of the defendants which is claimed to be in their possession since long. From the statement of Shri Ram Asra (PW-2), it is clear that the dispute is a boundary dispute.

Therefore, in my view, the present appeal deserves to be dismissed and is ordered accordingly. The substantial questions of law are answered accordingly.

(Sanjay Karol),
Judge.

August 22, 2007
(rana)